

ANNUAL REPORT  
OF THE  
ENVIRONMENTAL QUALITY SERVICE COUNCIL



Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204

October, 2011

# INDIANA LEGISLATIVE COUNCIL

## 2011

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Fort Wayne

Speaker Brian Bosma

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# ENVIRONMENTAL QUALITY SERVICE COUNCIL

## Membership Roster

### Representatives

James Baird  
Greencastle

David Wolkins  
Winona Lake

Ryan Dvorak  
South Bend

Matt Pierce  
Bloomington

### Senators

Beverly Gard, Chairperson  
Greenfield

James Buck  
Kokomo

Frank Mrvan  
Hammond

Karen Tallian  
Portage

### Laymembers

Dwayne Burke  
Indianapolis

Thomas Easterly  
Indianapolis

Heather Hill  
Greenfield

Calvin Davidson  
Clayton

Doug Meyer  
Lafayette

Dave Wyeth  
North Salem

John Hardwick  
Valparaiso

### Staff

Ruth Rivera  
Attorney for the Council

Jessica Harmon  
Fiscal Analyst for the Council

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

## **I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES**

The Environmental Quality Council (EQSC) is established by IC 13-13-7.

The Legislative Council charged the EQSC with studying the following topics in 2011:

A. Topics related to the supply and quality of water in the Great Lakes as set forth in IC 13-13-7-9 (6) (SEA 157);

B. Federal funds for water protection, infrastructure conditions and regulatory matters affecting shipping and other relevant matters (SEA 157);

C. Each program administered by IDEM for which the annual revenue generated by the program exceeds IDEM's annual cost to administer the program (SEA 433); and

D. The actual and potential air emissions created by the distillation of mint and whether the distillation of mint should be considered a farming operation (as defined in 326 IAC 1-2-28) for the purpose of requiring a permit under IC 13-17. EQSC shall prepare a report on these topics and advise IDEM on the feasibility of establishing permit requirements for mint distillation operations under IC 13-17 (HEA 1451).

## **II. INTRODUCTION AND REASONS FOR STUDY**

The EQSC also reviewed the current suitability of IC 13-21, Indiana's Solid Waste Management Districts statute. All activities of the EQSC were conducted to discharge the EQSC's responsibilities under IC 13-13-7-9.

## **III. SUMMARY OF WORK PROGRAM**

The EQSC held five meetings as follows:

State House, Indianapolis, Indiana:

August 04, 2011- IDEM Annual Report

August 30, 2011- Mint Distillation Issues and Air Issues

October 07, 2011- Solid Waste Management Districts

October 25, 2011- Recommendations and Adoption of Final Report

Portage, Indiana: September 29, 2011- Great Lakes Issues

Minutes and exhibits provide detailed information of each meeting, and are accessed from the General Assembly's website at <http://www.in.gov/legislative/>.

## **IV. SUMMARY OF TESTIMONY**

### **August 4, 2011 (IDEM Annual Report)**

Thomas Easterly, Commissioner, Indiana Department of Environmental Management (IDEM), addressed the following during IDEM's Annual Report presentation: (1) state of the environment; (2) enforceable operating agreement program; (3) pollution prevention; (4) household hazardous waste program; (5) hazardous substance response trust fund; (6) administratively extended NPDES permits; (7) CFO/CAFO activities; (8) waste tire management grant program; (9) recycling market development program; and (10) mercury switches in end of life vehicles activities. Mr. Easterly also presented information regarding

IDEM's program expenditures and related revenues.

### **August 30, 2011 (Mint Distillation; Other Air Issues)**

Tom Easterly made a presentation that explained: (1) the background of IDEM's enforcement actions concerning mint distillation operations; (2) recent legislation (HB 1451) on the issue of whether mint distilling operations should be considered a "farm operation"; (3) environmental sampling and testing conducted by IDEM; (4) options, including possibilities for air emission exemptions; and (5) IDEM recommendations.

Dan Gumz, Richard Gumz Farms, Randy Matthys, Shady Lanes Farms, Todd Lawrence, Lawrence Brothers Farms, and Larry Wappell, Wappell Farms, testified to the issue of why the production of mint oil should be considered "farm operations." The mint farm owners' remarks: (1) provided a historical context to the production of mint oil; (2) described the farming process of mint plants and the distillation of oil; and (3) explained the reasons for considering the harvesting of mint oil an agricultural enterprise and not an industrial process.

Bernie Paul, B. Paul Consulting, LLC, reported on the US Environmental Protection Agency (EPA) air quality initiatives and their potential economic impact on Indiana due to coal being the major source of energy and older plants not being equipped with required controls.

Jennifer Curran, Executive Director Transmission Strategy, Midwest Independent Systems Operator (MISO), presented an impact analysis study of operational and economic possible outcomes posed by potential regulatory effects of the Clean Water Act, Coal Combustion Residuals, Cross State Air Pollution Rule, and Mercury and Air Toxic Standards.

### **September 29, 2011 (Great Lakes Issues)**

John Goss, Asian Carp Director, Council on Environmental Quality, reported on the impact of Asian carp on Indiana and the Great Lakes region, including a discussion on: (1) fish behavior scientific research; (2) implementation of control and elimination strategies; and (3) state and federal efforts countering the problem of invasive species.

Ron McAhrn, Deputy Director, Indiana Department of Natural Resources (DNR), provided an update on the Great Lakes-St. Lawrence River Basin Water Resources Compact. His presentation included: (1) a historical context of the Compact; (2) water resource compact diversion; (3) an overview of voluntary water conservation and efficiency programs; and (4) context data on the hydrology and water budget of the river basin.

Mike Molnar, Director, Lake Michigan Coastal Program, Program Specialist, Jenny Orsburn, Lake Michigan Coastal Program, and Colin Highlands, Coordinator, Lake Michigan Coastal Program Nonpoint/LaMP/GLRI, provided an overview of the DNR's Lake Michigan Coastal Program's structure and policies, reported on the support of local governments' projects and research through its Coastal Grant Program, and described the Nonpoint Source Management Program and Clean Marina Program efforts to reduce pollution impact on Indiana's coastal watershed.

Tom Easterly explained IDEM's authority and responsibilities for ensuring that Great Lakes waters in

Indiana are suitable for their intended uses. He described funding sources supporting water quality activities, such as dredging projects addressing historical pollution, water testing of beaches, and work related to restoring the chemical and biological integrity of the lake. The Commissioner also reported on issues related to the uses and consumption of Great Lakes water, and pollution sources and impact. Mr. Easterly stated that IDEM's top Great Lakes concerns are: (1) new aquatic invasive species; (2) eutrophication and nutrient inputs; (3) untreated sewage discharges; (4) contaminated river and lake sediments; and (5) fluctuating lake levels.

Michael McCabe, Director, Council of State Governments Midwestern Office, discussed recent activities of the Great Lakes Legislative Caucus. He reported on Asian carp initiatives of states other than Indiana, and explained strategies to keep invasive species out of the Great Lakes, such as regulation of ballast water and the separation of the watersheds. Mr. McCabe also informed the EQSC about the ongoing renegotiation of the Great Lakes Quality Agreement between Canada and the US, and described current efforts to fully implement the Great Lakes Compact.

### **October 7, 2011**

Bruce Palin, Assistant Commissioner, IDEM Office of Land Quality, presented a historical overview of past landfill capacity and environmental impact and solid waste management districts (SWMD). Mr. Palin described the financing structures of SWMD, and proposed policy considerations related to SWMD.

Mark Shublak, Public Affairs Attorney, Ice Miller, LLP, representing the Association of Indiana Solid Waste Management Districts, provided information on SWMD structures, income sources and budgets. Mr. Shublak described programs offered and supported by SWMD, including recycling, collection of household hazardous wastes, education, and partnerships with local communities and private enterprises.

Jim Murray, Director, Bartholomew County Solid Waste Management District, made remarks that included a historical account, a summary of accomplishments, and an overview of challenges faced by the Bartholomew County solid waste district.

Steve Johnson, Executive Director, Wabash County Solid Waste Management District, emphasized the importance of maintaining relationships between solid waste districts and the local community. Mr. Johnson also discussed the importance of educational programs to encourage recycling and his concerns about making sure that programs are funded appropriately.

Steve Christman, Executive Director, Northeast Indiana Solid Waste Management District, and Region 4 Council Director of the Solid Waste Association of North America (SWANA), described SWANA's roles, responsibilities, and benefits. Mr. Christman also discussed the role of local governments in municipal solid waste management.

Carey Hamilton, Executive Director, Indiana Recycling Coalition (IRC), reported on the benefits of recycling and the working relationship between IRC and the SWMD.

Lisa Disbrow, Director of Public Affairs, Waste Management of Indiana LLC, and Terri Guerin, Chairman of the Board of the Indiana Chapter of the National Solid Waste Management Association (NSWMA) and Government Affairs Representative (Solid Waste Operations), AZO Services, Inc., made remarks concerning: (1) their views that education should be the primary function of SWMD; (2) competitive issues between SWMD and private business; (3) the value of SWMD to the commercial and

private sectors; and (4) funding of SWMD.

Vincent Griffin, Vice President, Environmental & Energy Policy, Indiana State Chamber of Commerce, advocated the importance of clear solid waste policies for Indiana businesses and industries. Mr. Griffin also recommended policy considerations to: (1) determine the needs and how to fulfill them given differing community demands, such as rural and urban; (2) devise more appropriate means to fund programs; (3) increase accountability; (4) define the roles of the state and local communities; and (5) observe the role of business and industry.

Patrick Bennett, Government Affairs Attorney, PKB Consulting, LLC on behalf of the Indiana Manufacturers Association, stated support for a review of Indiana's Solid Waste District statute, and a recommendation that property tax not be used as a funding source for the districts.

Canda Worman Smith, Owner and Operator, Worman Enterprises, Inc., provided an account of her experiences with the permitting requirements of the Boone County Solid Waste Management District.

Jennifer Lawrence, Executive Director, Boone County Solid Waste Management District, responded to questions posed by Council members pertaining to permit fees imposed by the Boone County SWMD and issues related to Worman Enterprises, Inc.

Danielle Coulter, Deputy Director of Government Affairs, Association of Indiana Counties (AIC), reported that the AIC has not taken an official position related to the review of solid waste districts' laws but the AIC will work with the Council and the legislature on possible policy changes.

## **October 25, 2011**

The EQSC discussed recommendations concerning the: (1) Indiana Department of Environmental Management (IDEM) cost of services; (2) operations of mint distillation; and (3) solid waste management districts (SWMD).

With the required quorum to take official action established, the EQSC formally adopted the final report and recommendations as passed during the meeting by a vote of 10-1.

## **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The EQSC had the quorum required to take official action on October 25, 2011. Voting members present included: Sen. Beverly Gard, Chair; Sen. James Buck; Sen. Frank Mrvan; Sen. Karen Tallian; Rep. David Wolkins; Rep. James Baird; Rep. Matt Pierce; Dwayne Burke; John Hardwick; Calvin Davidson; and Heather Hill.

The EQSC adopted the following recommendations:

### **Mint Distillation Operations**

The EQSC urges IDEM to continue working with mint farmers to ensure air quality compliance by using U.S. EPA guidance, including the country grain elevator EPA guidance as appropriate to calculate the potential to emit in a manner to minimize regulatory and permitting requirements while providing all

legally required environmental authorizations for mint farming activities.

### **Solid Waste Management Districts (SWMD)**

1. As an instrument of state government, continuous evaluation of SWMD is beneficial to their management. Annual reporting by SWMD that includes detailed financial and programmatic information should be required. Reports should be filed with IDEM and the Legislative Council in a form provided by IDEM. Also, the legislature should re-evaluate the continued existence of SWMD every 10 years.
2. IC 13-21-3 should be amended to reflect the clear instruction of the General Assembly to prohibit solid waste management districts from requiring permits on waste management activities, including those activities not subject to federal or state regulation.
3. A primary function of SWMD should be to educate the public on matters of solid waste management and disposal, including recycling opportunities. IC 13-21-3 should be amended to require the function of education by SWMD and to provide a minimum, uniform level of education.
4. The issue of funding and expenditures of SWMD is complex. Numerous sources of funding are available to SWMD. These sources include property tax, COIT, CAGIT and LOIT among many others. The disparity among the sources from which to draw leads to inequity in a now regionalized waste disposal system. Surcharges and fees imposed by SWMD inappropriately impact and influence the marketplace and should be reviewed in additional studies conducted in a timely manner. The scope of funding for SWMD should be streamlined in an effort to eliminate disparity among districts.
5. Indiana counties may determine that their participation in a SWMD is not in the best interest of a county. IC 13-21-3 should be amended to reflect the option of a county to decline to form or participate with a SWMD.



## WITNESS LIST

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Indiana Manufacturers Association

Government Affairs Attorney, PKB Consulting, LLC

Steve Christman

Executive Director, Northeast Indiana Solid Waste Management District

Region 4 Council Director, Solid Waste Association of North America

Danielle Coulter

Deputy Director, Government Affairs, Association of Indiana Counties

Jennifer Curran

Executive Director Transmission Strategy, Midwest Independent Systems Operator

Lisa Disbrow

Indiana Chapter, National Solid Waste Management Association

Director of Public Affairs, Waste Management of Indiana, LLC

Thomas Easterly

Commissioner, Indiana Department of Environmental Management

John Goss

Asian Carp Director, Council on Environmental Quality

Vincent Griffin

Vice President, Environmental & Energy Policy, Indiana State Chamber of Commerce

Terri Guerin

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Association

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Dan Gumz

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Carey Hamilton

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Randy Matthys

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Michael McCabe

Director, Council of State Governments Midwestern Office

Mike Molnar

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